FOR MYSORE STATE

Home (1954) Department

Ys SERIES.

G.O. NO. 313 i

Dated 21 X 54

Named

[Despatch Abstract.]

Crl Rev Appeal against accused
S Canara dist C.C. 564/53 [redacted]
(Wholewitnesses) S Kanara - [redacted]

Declined

G.F. 32 (a)—( 184,468—15-11-52.

10/26/25

Judicial Department | Received ——— Registered ———

From (Name) Sri V.T.Rangaswami Ayyangar, B.A.B.L.,
Designation Public Prosecutor,
Station Madras.

To
The Secretary to Government,
Home Department, Madras.

Enclosures: No. 126/1954, dated 30th Septr. 1954

ASSISTANT SECRETARY TO GOVERNMENT 1-OCT-1954 HOME DEPARTMENT

Sir,

Sub: Appeal against acquittal - C.C.No.564 of 1954 on the file of the Addl.F.C.M.(South Kanara)

Ref: G.O.Rt.No. 2676, Home, dated 10th September 1954

In the above matter I gave my opinion dated 25-8-1954 on the strength of the ruling of the Supreme Court to the effect that it is not obligatory on the part of the prosecution to establish that any person charged with the offence under Sec. 4-A of the Prohibition Act consumed liquor. Since the opinion was given the Constitution Bench of the Supreme Court

CR 129314 1x05

B

have held that it is the duty on the part of the prosecution to establish that any person charged with the offence under the section should be proved to have consumed liquor within the meaning of the Act.

C

In view of the ruling of the Supreme Court I suggest that the appeal in the particular case need not be filed and this reconsideration of my opinion is due to the later decision of the Supreme Court. Orders therefore may issue to the effect that the appeal need not be filed under the circumstances of the case.

The papers received for reference are returned herewith

V.T. Rangaswamy

Public Prosecutor.

30.9.57

IN THE COURT OF THE ADDL.I CLASS MAGISTRATE,(Pro)S.Kanara

Mangalore.

Present:Sri F.M.Pinto.

Criminal Register No.25.

Register of Summary Trials.

1.Serial Number ~~340.54.~~ 364/54

2.Date of the commission of the offence: 24.5.54.

4.Date of the report or complaint 1.6.54.

4.Name of the complainant:Prohibition Sub Inspector P.C.R.1/54.

5.Name, parentage and residence of the accused persons:

Vasudeva Vittal Prabhu S/o Vittal Krishna Prabhu Shivalli.

Offence

6.Complained of Found in a state of intoxication in the open punishable under section 4A of the M.P.Act.

7.Proved if any

8.Value of property in respect of which offence committed

9.Prisoner's plea. Denies.

10.Finding and in the case of conviction, brief statement of the reasons thereof:

11.Sentence or other order:The accused having denied the offence. P.W.1 the prohibition Sub Inspector, and P.W.2 the medical Officer were examined. P.W.1.states that on

24.5.54, at 10.30 P.M. he arrested the accused as he was in a state of intoxication and sent him to the Medical Officer P.W.2 for examination

P.W.2 is a private Medical Practitioner. He states he examined the accused at 10.40 P.M. on 24.5.54, and found eyes conjested pupil dilated and react sluggishly to light, breath smelling liquor, Gait unstead and staggering. He was of opinion that the accused had consumed liquor and was under its influence (Intoxicated) as noted in Ex.-1.

The accused had nothing further to say and had no defence.

P.W.2 in cross examination stated that he could no say if the smell of liquor was due to arrack and that the other symptons mentioned may also be due to other causes as well. In these circumstances the prosecution has failed to establish a case against the accused. In the light of the decision A.I.R. 1954 Madras 370(Vol.41.C.No.154), I find the accused not guilty and acquit him under section 245(1 Cr.P.C.

12. Date on which the proceedings terminated. 17.6.54.

Sd.F.M.Pinto.
Addl.First Class Magistrate (Pro)S.K.

Appendix.

Witnesses examined for prosecution

P.W.1.Sri K.A.Baig.

P.W.2 Dr.Giridhar Rao.

WITNESS EXAMINED FOR DEFENCE.

Nil

Exhibits marked for prosecution.

Ex.P1, 24.5.54.Certificate from the medical Officer.

Exhibits marked for defence.

Nil.

Material objects marked.

Nil.

Sd.F.M.Pinto.

Addl.First Class Magistrate (Pro)S.K.

(Section Cutter)

10/625/12.

Form 109. PETTY CASE CHARGE SHEET ORDER No.706

Report to the Additional I class Magistrate (Prohibition) Mangalore under M.P.Act by P.S.I.Udipi station.

S.L. 1/54 dated 24.5.54.

Name and address) of person charged — Vasudev Vittal Prabhu son of Vittal Krishna Prabhu Kunjibettu of Shivalli village.

By whom arrested and when. — Sri K.Anwar Baig Pro. S.I. Of Udipi Station 10.30 P.M on 24.5.54.

When Bailed. — 02.30 hrs on 25.5.54.

CHARGE: Noted against Col.2 is charged for having been found in a state of intoxication by consuming arrack in a public place at Parkala of Herga village at about 10.30 P.M on 24.5.54 offence under section 4A of M.P. Act XXI of 1937.

Date on which put up before Magistrate: 4.6.54 at 10 A.M

Sentence:

Remarks:

Witness: K.A.Baig P.S.I of Udipi station

2)Gridhara Rao, Doctor L.I.M of Herga village

Sd/ xx xx
Sub Inspector of
Prohibition station,Udipi
25.5.54.

-True copy-

For Addl.Dt. agistrate(I)

M.Dis. 64/54.

Retransmitted.

The accused in this case was charge sheeted for an offence under section 4A of the M.P/Act by the Sub Inspector of Prohibition, Padavu as he was found in a state of intoxication in a public place in Kudpu village. The doctor who had examined the accused immediately has certified in unequivocal terms that he was smelling liquor and was under its influence. This certificate gives all the important symptoms observable in a drunken person. As rightly observed by Justice Ramaswami in the unreported decision, any prudent and reasonable man cannot avoid coming to the conclusion in the instant case that the accused was under the influence of liquor and was drunk, having regard to the cumulative effect of all the symptoms mentioned in the certificate. The Doctor seems to have conceded that the symptoms taken individually may be due to other causes, though it is not clear ~~that~~ if the prosecution had elicited from him the reasonable inference that might be drawn collectively.

On a reading of the facts of the decision relief on by the learned Addl.First Class Magistrate it appears to me a case charged and convicted under section 4(1) (J) M.P.Act reported in 1952 M.W.N. Cr.page 277. as throughout reference is made to consumption and smell. Further it is not clear if the accused in that case was caught in the open or in his house. The facts of the present case come within the purview of the 1st part of Sec. 4.A the accused having been found drunk in the open, and as such, the cause of intoxication is immaterial. The decision relied on by the Addl.First Class Magistrate may be applicable if the accused was found drunk in his house, as in that case the provisions of the 2nd part of Sec.4A would be applicable.

The High court of Bombay in a case arising under the Bombay Prohibition Act. for breach of provisions similar to those of Sec. 4(1) (J) of the Madras Prohibition Act, has held that the burden of proving the consumption of non prohibited liquor or drink is on the person pleading the same, that being a fact peculiarly within his knowledge. It appears that this view has been confirmed by the Supreme Court

Having regard to the facts of the present case, the misapplication of the case law, the conflicts of views between two judges (both sitting singly) the importance of law involved and the far reaching effect in the successful enforcement of the provisions of Sec.4(1) (j) and 4-A of M.P.Act, I feel that this is a fit case to be taken up to the High Court in appeal.

Being an appeal against acquittal, the Government will have to be moved within two months from the date of judgment i.e. by 30/7-54 after obtaining the opinion of the Public Prosecutor, Mangalore.

Copies of depositions requested for by me may please be forwarded to the Public Prosecutor

-True copy-

† Mangalore
25. 6. 54

(29) x x x
Addl. Public Prosecutor
Mangalore

13/7 Addl. Dt. Magistrate

Copy of C.C.No.410/54 letter dated 12.7.54 from the Public Prosecutor Kadri

C.C.No.410/54 A.P.C.M Prohibition- appeal against acquittal opinion.

The opinion given by Sri P.Ramachandra Rao, Assistant Public Prosecutor Grade I appears to be quite correct. The medical certificate given by the doctor and the other evidence in the case would make any reasonable person come to the conclusion that the accused was found in state of intoxication in a public place.

As regards the law involved, there are conflicting decisions by the judges of our own High court on the question of proof required to prosecute a man successfully under section 4(a) of the Madras Prohibition act. However, this appears to be a fit case to be taken up on appeal against acquittal.

Sd/ M.M.Prabhu

-True copy-

For Addl.Dt.Magistrate(I)

Copy of letter dated 31.7.54 from the Public Prosecutor Mangalore to the Dt. Prohibition Officer, S.Kanara.

C.C.No.564 of 1954- A.F.C. M Prohibition- acquittal of accused- appeal against acquittal- opinion.

The facts of this case are identical with the facts of the case tried and acquitted by the Addl. I class Magistrate (Prohibition) in C.C.No.410/54 and in which I have given you an opinion. For the same reasons given by me for taking up C.C.No.410/54 on appeal against acquittal the present case (C.C.No.564/54) should also be taken up on appeal against acquittal.

-True copy-

For Addl. Dt. Magistrate(II

13/8/54

IN THE COURT OF THE ADDL.I CLASS MAGISTRATE)Pre)S.Kanara

Mangalore

Present:Sri F.M.Pinto.

Criminal Register No.25

Register of Summary Trials.

1.Serial Number ~~546.54.~~ 564/54

2.Date of the commission of the offence: 24.5.54.

4.Date of the report or complaint 1.6.54.

4.Name of the complainant:Prohibition Sub Inspecter P.C.R.1/54.

5.Name, parentage and residence of the accused persons:

Vasudeva Vittal Prabhu S/o Vittal Krishna Prabhu Shivalli.

Offence

6.Complained of | Found in a state of intoxication in the open
7.Proved if any | punishable under section 4A of the M.P.Act.

8.Value of property in respect of which offence committed:

9.Prisoner's plea Denies.

[redacted]

the medical Officer were examined. P.W.1 states that on

24.5.54, at 10.30 P.M. he arrested the accused as he was in a state of intoxication and sent him to the Medical Officer P.W.2 for examination.

P.W.2 is a private Medical Practitioner. He states he examined the accused at 10.40 P.M. on 24.5.54, and found eyes congested, pupil dilated and reacts sluggishly to light, breath,smelling liquor, Gait unstead and staggering. He was of opinion that the accused had consumed liquor and was under its influence (Intoxicated)as acted in Ex.P.1.

The accused had nothing further to say and had no defence.

P.W.2 in cross examination stated that he could not say if the small of liquor was due to arrack and that the other symptoms mentioned may also be due to other causes as well. In these circumstances the prosecution has failed to establish a case against the accused. In the light of the decision A.I.R. 1954 Madras 376(Vol.41.C.No.154).I fi the accused not guilty and acquit him under section 245(1 Cr.P.C.

12.Date on which the proceedings terminated 17.6.54

Sd.F.M.Pinto.
Addl.First Class Magistrate (Pro)S.K

Appendix.

Witnesses examined for prosecution.

P.W.1.Sri K.A.Baig.

P.W.2 Dr.Giridhar Rao.

WITNESS EXAMINED FOR DEFENCE.

Nil.

Exhibits marked for prosecution.

Ex.P1. 24.5.54.Certificate from the medical Officer.

Exhibits marked for defence.

Nil.

Material objects marked.

Nil.

Sd.F.M.Pinto.

[redacted] (Pro)S.K.

IN THE COURT OF THE ADDL.I CLASS MAGISTRATE (Pre)S.Kanara.

Calendar Case No. 564.of 1954.

Ex.Pl. (IId)F.M.Pinto.A.F.C.N. 17.6.54.

Dr.U.Giridhar Rao,L.I.M. Parkala S.K.

Regd. Medical Practitioner. Date. 24.5.54.

Signs of alchoholism found on the person of a male called Vasudeva Vittala Prabhu S/o Vittala Krishna Prabhu aged 22 years an inhabitant of Anajibettu of Shivalli village Udipi who was sent with a requisition from the Prohibition Sub Inspector,Udipi for a report to his drunkeness.

IDENTIFICATION

1.Black mole just below the centre of the left clavical.

2.Black mole about 5" Medial and below the left nipple.

The person above noted was first seen by me at 10.40 P.M. and was examined at 10-40 p.m. on 24.5.54 on 24.5.54, when the following signs were found.

1.Eyes congested,pupil dilated and reach sluggishly to light

2.Breath smell of liquer.

3.Pulse 120.p.m. Respiration 24 P.M

4.Gait unsteady and staggering.

I am of opinion that the above person consumed liquer and is under its influence (is intoxicated)

Sd.U.Giridhara Rao

-True copy-

13/8

C.No. 12931A/54.

Home (Cts.S) dept.

G.O.No. 3139. Dated. 21.10.54.

Crl. Jus. - Appeal against acquittal S. Kanara dist. - C.C.No. 564/54 on the file of the A.F.C.M., (Prohibition) S. Kanara - Applns. - declined.

Read: From the A.D.M.(I), S. Kanara, C.No. 5068-54-C5 (Spl) dt. 9.8.54.

2) G.O.Rt.2676, Home, dt. 10.9.54.

3) From the P.P., Madras, Opn.No. 126/54 dt. 30.9.54.

In the G.O. 2nd cited, the Govt. sanctioned applin. for filing an appeal against the acquittal of the accused by the A.F.C.M. (Prohibition) S. Kanara, in C.C.No. 564 of 54 on his file. In view of the O.cs stated in the ref. 3rd cited, the Govt. consider that no appeal against the acquittal and declining to file an appeal.

CENTRAL DESPATCH BRANCH
Dispatched by Regd. Post. Messenger.
Date 28/4 1954 Despatcher

dtd 14.X.54.

To
The P.P., Madras.

Copy to the A.D.M.(I), S. Kanara (w.e. copy of pp 1 & 2 c.f.).

Home (Cts I) Dept.

C. No. 12931 4/54.

Appeal against acquittal - C.C. No. 564/54 on the file of the A.F.C.M. (S. Kanara)

Ref: From the P.P., Madras, Opn. No. 126/54 Dt. 30.9.54.

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ibid

The letter from the P.P. Madras, on pp. 1 & 2 C.f. may be perused.

p. 1 C.f.

On a favourable opinion given by the P.P., Madras, the State sanctioned applⁿ. for filing an appeal against the acquittal of the accused by the A.F.C.M., S. Kanara in C.C. No. 564/54 on his file. (Vide G.O. R. 2676, Home, Dt. 10.9.54). The P.P's opinion was based on the ruling of the S. Ct. that it is not obligatory on the part of the prosecution to establish that the person charged with the offence under Sec. 4A. of the Prohibition Act consumed liquor. Since his opinion was given, the Madras High Court subsequently held that the onus of proving that the accused consumed liquor rests on the prosecution. In view of the latter ruling of the S. Ct., the P.P. now requests that orders might issue withdrawing the appeal against the acquittal and not be filed ~~nullifying the original order~~. The Govt. may issue orders in this regard.

pp 15 & 16 C.f. of (b1)

p. 17 C.f. of (b2)

A on p. 1 C.f.

B on p. 2 C.f.

ibid

C ibid

12931/4

The draft order submitted is for approval. Law. Inq. Jus [illegible]

Law

11-12-00. 12931/4 CTS I/54
15/10.

Law Department.

Seen in Law.

19-10-54

D.S.

Home

Law no 16580/541
19.X.54

Home (Cts I) Dept.

The note of Law above may be perused and the draft order below may now issue.

21.X.54.

21.10.54.

[Issued as G.O. No. 3139, H., Dt. 21.X.54]

p.17 cf